

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 3, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1248

Cir. Ct. No. 2009CF227

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EDWARD ALEX MEADE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Edward Alex Meade, *pro se*, appeals an order denying his motion for collateral postconviction relief brought pursuant to WIS. STAT. § 974.06. Meade argues that he received constitutionally ineffective assistance from his trial lawyer. Three of Meade's claims of ineffective assistance

are procedurally barred because Meade raised them in his direct appeal. Meade's fourth claim of ineffective assistance of counsel is conclusory. Therefore, we affirm the circuit court's order denying the motion without a hearing.

¶2 Meade was convicted in 2009 after a jury trial of one count of second-degree sexual assault by use or threat of force or violence, one count of second-degree sexual assault causing injury, and one count of second-degree reckless injury. Meade's appointed appellate lawyer moved for postconviction relief, arguing that Meade received constitutionally ineffective assistance from his trial lawyer. The circuit court denied the motion without a hearing. Meade appealed to this court, and we affirmed. Meade then filed a *pro se* motion for collateral postconviction relief pursuant to WIS. STAT. § 974.06, again arguing that he received constitutionally ineffective assistance from his trial lawyer. The circuit court denied the motion without a hearing.

¶3 Meade argues that he received ineffective assistance from his trial lawyer counsel because: (1) his trial lawyer should have presented testimony from a neighbor, Andrew Jefferson, that there was no unusual noise coming from Meade's apartment during the assault; (2) his trial lawyer should have moved to suppress his statement to the police; and (3) his trial lawyer should have attempted to present additional evidence of prior consensual sexual encounters between Meade and the victim.

¶4 We conclude that Meade is procedurally barred from raising these issues. "A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue." See *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512, 514 (Ct. App. 1991). The first two arguments are identical to those Meade previously

raised during direct appeal. Although Meade frames the arguments differently than his appellate lawyer did, that does not allow him to escape the procedural bar. Moreover, his *pro se* arguments add nothing that is legally substantive to the arguments his appellate lawyer already raised.

¶5 As for the third argument about evidence of prior sexual contact with the victim, Meade argued on direct appeal that his lawyer should have more persuasively argued for admission of evidence that Meade and the victim had prior consensual sexual encounters where she bled. The circuit court allowed testimony about one incident. Here, Meade broadens the scope of his claim, arguing that his lawyer should have argued for admission of evidence that Meade and the victim had prior consensual sexual encounters where rough and forceful contact had occurred in the victim's vaginal area. The crux of Meade's recast argument is that the jury should have heard more evidence about prior sexual activities between him and the victim to show that he had not assaulted her, but rather they were having a sexual encounter like ones they previously had. This is the same argument that Meade raised and we rejected during his direct appeal. Therefore, it is procedurally barred.¹

¶6 Meade next argues that his appellate lawyer should have argued that his trial lawyer was ineffective because his trial lawyer "failed to present expert testimony at trial to rebut the State's accusations and expert testimony." He contends that it was imperative for his trial attorney to present expert testimony in

¹ In our prior decision, we pointed out that the circuit court explained that there was no reasonable probability that the jury would conclude that this incident was a result of consensual sexual activity. The victim bled extensively, soaking her clothing with blood. She had blood clots and vaginal lacerations that required cauterization.

support of the defense because the jury heard “expert medical testimony from not one, but *three* medical experts, in support of the State’s accusations.”

¶7 “A hearing on a postconviction motion is required only when the movant states sufficient material facts that, if true, would entitle the defendant to relief.” *State v. Allen*, 2004 WI 106, ¶14, 274 Wis. 2d 568, 580, 682 N.W.2d 433, 439. “[A] postconviction motion for relief requires more than conclusory allegations.” *Id.*, 2004 WI 106, ¶15, 274 Wis. 2d at 580, 682 N.W.2d at 439. “[T]he motion must include facts that ‘allow the reviewing court to meaningfully assess [the defendant’s] claim.’” *Id.*, 2004 WI 106, ¶21, 274 Wis. 2d at 584, 682 N.W.2d at 441 (citation omitted; second set of brackets in *Allen*). Meade’s allegation is conclusory. He wholly fails to explain *why* his lawyer should have presented rebuttal expert testimony, *what* the expert would have testified about and *how* the testimony might have helped his defense. Meade’s argument is not supported by factual allegations that, if true, would entitle him to relief. Therefore, we conclude that the circuit court properly rejected Meade’s argument without a hearing.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

